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09/835,253

04/13/2001

Christopher J. Moullos

113748-5760US

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12/13/2006

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EXAMINER

SELLERS, DANIEL R

ART UNIT

PAPER NUMBER

2615

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/835,253

Applicant(s)

MOULIOS, CHRISTOPHER J.

Examiner

Daniel R. Sellers

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7,8,10-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claims 1-5, 7-8, 10-14, and 16-20** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. Regarding **claim 1**, the Office's "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" provides guidance on the determination of statutory matter. Claim 1 discloses a method with various steps, and this method is determined, by consulting the specification, to be embodied by a computer product (specification, p. 2-3, para. 0001-0010). This is deemed to be acceptable, since the specification defines a computer product as a computer-readable medium storing a computer program (para. 0002-0003).

However, claim 1 embodies an abstract idea, which has been determined to be a judiciary exception. The claimed subject matter does not provide a practical application of the abstract idea, or judiciary exception. A useful, concrete, and tangible resulting from the abstract idea is evidence of a practical application. Claim 1 provides no useful, concrete, or tangible result, and therefore is non-statutory.

4. **Claims 2-5, 7-8, and 10** are rejected under 35 USC 101, because they depend upon claim 1. See the preceding argument with respect to claim 1, these claims do not provide a practical application.

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5. Regarding **claim 11**, a computer product is claimed, which is also apparently a system. This is deemed to be acceptable, since the specification defines a computer product as a computer-readable medium storing a computer program (para. 0002-0003). However, see the preceding argument with respect to claim 1, this claim does not provide a practical application of an abstract idea, and therefore is non-statutory.

6. **Claims 12-14 and 16-17** are rejected under 35 USC 101, because they depend upon claim 11. See the preceding argument with respect to claim 11, these claims do not provide a practical application, and therefore is non-statutory.

7. Regarding **claim 18**, the claim recites a system comprising a processor and a storage medium holding instructions so that the processor can perform a determination. This language, when compared and contrasted with independent claims 1, 11, and 21 and the specification, is claiming a computer product or abstract idea. Claim 18 is non-statutory because the abstract idea claimed does not provide a practical application with a useful, concrete, and tangible result.

8. **Claims 19-20** are rejected under 35 USC 101, because they depend upon claim 18. See the preceding argument with respect to claim 18, these claims do not provide a practical application, and therefore is non-statutory.

***Allowable Subject Matter***

9. **Claims 1-5, 7-8, 10-14, and 16-20** are allowable if the 35 USC 101 rejection outlined above is overcome.

10. **Claim 21** is allowed.

11. The following is a statement of reasons for the indication of allowable subject matter:

**Claim 1** is allowable, because the prior art of record does not teach nor suggest “digitally comparing a first portion of a recorded signal, starting from an established anchor point with at least one different portion of the recorded signal subsequent to the anchor point, wherein the at least one different portion is extrapolated from the first portion.” The prior art also does not teach or suggest the feature of refining the length of the portions, wherein the recurring events are “digitally comparing a pattern included in the first portion with patterns included by the at least one different portion, wherein the portions all have the same length.”

As stated, on p. 10 of the reply received 10/4/06, Marx teaches digitally comparing patterns of portions of a song with predetermined linear time grids, or patterns. This does not suggest comparing subsequent portions, or loops, in the same recorded signal with the first established loop.

**Claims 2-5, 7-8, and 10** are allowed because they depend on claim 1.

**Claim 11** is allowable for the same reasons as claim 1.

**Claims 12-14 and 16-17** are allowed because they depend on claim 11.

**Claim 18** is allowable for the same reason as claim 1.

**Claims 19 and 20** are allowed because they depend on claim 18.

**Claim 21** is allowable for the same reasons as claim 1. Marx does not teach comparing the a first and a second portion of the same recorded signal, but instead teaches comparing the first or other portions of the same recorded signal with

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predetermined patterns. This does not suggest or make obvious the claimed subject matter.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-7528. The examiner can normally be reached on Monday to Friday, 9am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DRS



**SINH TRAN**  
**SUPERVISORY PATENT EXAMINER**